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DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-967, C-570-968]

Aluminum Extrusions from the People's Republic of China: Final Affirmative Determination of Circumvention of the Antidumping Duty and Countervailing Duty Orders, and Partial Rescission

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that aluminum extrusions exported from Vietnam, that are produced from aluminum previously extruded in the People's Republic of China (China), are circumventing the antidumping duty (AD) and countervailing duty (CVD) orders on aluminum extrusions from China. Commerce has also rescinded the minor alterations circumvention inquiry.

DATES: Applicable [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Paul Walker, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-0413.

SUPPLEMENTARY INFORMATION:

Background

On May 17, 2019, Commerce published the *Preliminary Determination*¹ of circumvention of the *Orders*.² A summary of the events that occurred since Commerce published the *Preliminary Determination*, as well as a full discussion of the issues raised by parties for this final determination, may be found in the Issues and Decision Memorandum.³ The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov>, and it is available to all parties in the Central Records Unit, room B8024 of the main Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn/>. The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Scope of the Orders

The products covered by the *Orders* are aluminum extrusions. For a complete description of the scope of the *Orders*, see the Issues and Decision Memorandum.

Partial Rescission of Circumvention Inquiries

In the *Preliminary Determination*, we stated that because of the affirmative determination of circumvention with respect to merchandise that has been completed or assembled in other foreign countries, pursuant to section 781(b) of the Tariff Act of 1930, as amended (the Act), we

¹ See *Aluminum Extrusions from the People's Republic of China: Affirmative Preliminary Determination of Circumvention of the Antidumping and Countervailing Duty Orders*, 84 FR 22445 (May 17, 2019) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

² See *Aluminum Extrusions from the People's Republic of China: Antidumping Duty Order*, 76 FR 30650 (May 26, 2011); and *Aluminum Extrusions from the People's Republic of China: Countervailing Duty Order*, 76 FR 30653 (May 26, 2011) (collectively, the *Orders*).

³ See Memorandum, "Issues and Decision Memorandum for the Final Affirmative Determination of Circumvention Concerning Aluminum Extrusions from the People's Republic of China," dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

did not make a determination with respect to the minor alterations inquiries, pursuant to section 781(c) of the Act.⁴ For these final results, because we continue to affirm circumvention with respect to merchandise that has been completed or assembled in other foreign countries, we are rescinding the minor alterations circumvention inquiries.

Scope of the Circumvention Inquiries

These inquiries cover aluminum extrusions that are made from aluminum previously extruded in China (including billets created from re-melted Chinese extrusions) that meet the description of the *Orders* and are exported from Vietnam, regardless of producer, exporter or importer (inquiry merchandise). This final ruling applies to all shipments of inquiry merchandise on or after the date of publication of the initiation of these inquiries.

Methodology

Commerce is conducting these inquiries in accordance with section 781(b) of the Act. For a full description of the methodology underlying the Commerce's final determination, *see* the Issues and Decision Memorandum.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties in these inquiries are addressed in the Issues and Decision Memorandum. A list of the issues raised is attached to this notice as Appendix I. Based on our analysis of the record evidence and comments received, we made certain changes to the *Preliminary Determination*.

Final Affirmative Determination of Circumvention

As detailed in the Issues and Decision Memorandum, we determine that aluminum extrusions exported from Vietnam, that are produced from aluminum previously extruded

⁴ *See Preliminary Determination* PDM at 15.

(including billets created from re-melted Chinese extrusions) in China, are circumventing the *Orders*. As such, we determine that it is appropriate to include this merchandise within the *Orders* and to instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation and require cash deposits for any unliquidated entries of aluminum extrusions from Vietnam, that are produced from aluminum previously extruded in China (including billets created from re-melted Chinese extrusions), as discussed below.

Continuation of Suspension of Liquidation

In accordance with 19 CFR 351.225(l)(3), Commerce will direct CBP to continue to suspend liquidation and to require a cash deposit of estimated duties on unliquidated entries of inquiry merchandise that were entered, or withdrawn from warehouse, for consumption on or after March 5, 2018, the date of publication of the initiation of these inquiries.

The suspension of liquidation and cash deposit instructions will remain in effect until further notice. Commerce will instruct CBP to require AD cash deposits equal to the China-wide rate of 86.01 percent⁵ for all extruded aluminum from Vietnam produced from aluminum previously extruded in China (including billets created from re-melted Chinese extrusions), unless the importer/exporter can demonstrate that the aluminum consumed in production was previously extruded by a Chinese manufacturer with a company-specific separate rate. In that instance, the cash deposit rate will be the rate of the Chinese supplier of the aluminum extrusions used in the production process that has its own rate.⁶

⁵ See *Aluminum Extrusions from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2015-2016*, 82 FR 52265, 52267 (November 13, 2017).

⁶ See, e.g., *Glycine from the People's Republic of China: Preliminary Partial Affirmative Determination of Circumvention of the Antidumping Duty Order and Initiation of Scope Inquiry*, 77 FR 21532, 21535 (April 10, 2012), unchanged in *Glycine from the People's Republic of China: Final Partial Affirmative Determination of Circumvention of the Antidumping Duty Order*, 77 FR 73426 (December 10, 2012).

Aluminum extrusions not produced from aluminum previously extruded in China are not subject to these inquiries and are not included within the scope of the *Orders* as a result of this final affirmative determination. Therefore, the suspension of liquidation and cash deposit requirements do not apply to such merchandise, subject to the following certification requirements: an importer of aluminum extrusions from Vietnam claiming that its aluminum extrusions were produced from non-Chinese aluminum extrusions (including billets created from re-melted Chinese extrusions) must meet the certification and documentation requirements described in Appendices II, III, and IV.

We determine that the following companies are not eligible for the certification process: China Zhongwang Holdings Ltd.; Global Vietnam Aluminum Co., Ltd.; Aluminicaste Fundicion de Mexico; Dalian Liwan Trade Co., Ltd.; Tianjin Boruxin Trading Co., Ltd.; Dragon Luxe Limited; Perfectus Aluminum Inc.; Perfectus Aluminum Acquisitions LLC; Pencheng Aluminum Enterprise Inc. USA; Transport Aluminum Inc.; Aluminum Source Inc.; Aluminum Industrial Inc.; Global Aluminum (USA) Inc.; Aluminum Shapes, LLC; Century American Aluminum Inc.; American Apex Aluminum Inc.; and Global Tower Worldwide Ltd.⁷ Accordingly, aluminum extrusions from Vietnam that are produced, exported, or imported by these companies are ineligible for the certification process.

⁷ See Issues and Decision Memorandum at Comment 3.

Administrative Protective Orders

This notice will serve as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

These determinations are issued and published in accordance with section 781(b) of the Act and 19 CFR 351.225(f).

Dated: July 31, 2019.

Jeffrey I. Kessler,
Assistant Secretary
for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the *Orders*
- IV. Merchandise Subject to the Circumvention Inquiries
- V. Period of Inquiry
- VI. Rescission of Minor Alterations of Merchandise
- VII. Changes Since the Preliminary Determination
- VIII. Statutory Framework
- IX. Use of Facts Available with Adverse Inference
- X. Statutory Analysis
- XI. Discussion of the Issues

Comment 1: Inquiry Merchandise is Circumventing the *Orders*

Comment 2: Inclusion of East Asia Aluminum in the Country-Wide Determination

Comment 3: Certification Requirements

- XII. Recommendation

Appendix II

Certification Eligibility and Requirements

A. Eligibility for the Certification

- (1) Importers and exporters of aluminum extrusions from the Socialist Republic of Vietnam (Vietnam) that were completed in Vietnam using aluminum not previously extruded in the People's Republic of China (China) (including billets created from re-melted Chinese extrusions) are eligible for the certification process detailed below and in the preliminary determination, with the exception of certain companies. The following companies are not eligible to participate in the certification process: China Zhongwang Holdings Ltd.; Global Vietnam Aluminum Co., Ltd.; Aluminicaste Fundicion de Mexico; Dalian Liwan Trade Co., Ltd.; Tianjin Boruxin Trading Co., Ltd.; Dragon Luxe Limited; Perfectus Aluminum Inc.; Perfectus Aluminum Acquisitions LLC; Pencheng Aluminum Enterprise Inc. USA; Transport Aluminum Inc.; Aluminum Source Inc.; Aluminum Industrial Inc.; Global Aluminum (USA) Inc.; Aluminum Shapes, LLC; Century American Aluminum Inc.; American Apex Aluminum Inc.; and Global Tower Worldwide Ltd.

B. Certification Requirements for Importers and Exporters of Aluminum Extrusions Completed in Vietnam Using Aluminum Not Previously Extruded in China (Including Billets Created from Re-Melted Chinese Extrusions)

- (1) For entries of aluminum extrusions completed in Vietnam that were entered, or withdrawn from warehouse, for consumption on or after March 5, 2018 (the date of publication of the initiation of these circumvention inquiries), for which the importer claims that the aluminum extrusions were completed (including extruded) in Vietnam using aluminum not previously extruded in China (including billets created from re-

melted Chinese extrusions), the importer and exporter are required to meet the certification and documentation requirements detailed below in order for no AD and/or CVD cash deposit to be required on such entries.

- (2) The importer is required to complete and maintain the importer certification, attached as Appendix III. Where the importer uses an agent or broker to facilitate the entry process, it must obtain and provide the entry number as part of the certification. Agents of the importer, such as brokers, however, are not permitted to make this certification on behalf of the importer.
- (3) The exporter is required to complete and maintain the exporter certification, attached as Appendix IV. The exporter certification should be completed by the party selling the merchandise completed in Vietnam to the United States, which is not necessarily the producer of the product.
- (4) The exporter is further required to provide the importer with a copy of the exporter certification.
- (5) The importer is also required to maintain a copy of the exporter certification.
- (6) The importer and exporter are also required to maintain sufficient documentation (as indicated in the certifications) supporting their certifications.
- (7) The importer and exporter are required to maintain the certifications and supporting documentation for the later of (1) a period of five years from the date of entry or (2) a period of three years after the conclusion of any litigation in United States courts regarding such entries.
- (8) Although the importer will not be required to submit the certifications or supporting documentation to U.S. Customs and Border Protection (CBP) as part of the entry process,

the importer and the exporter will be required to present the certifications and supporting documentation, to Commerce and/or CBP, as applicable, upon request by the respective agency.

- (9) The claims made in the certifications and any supporting documentation are subject to verification by Commerce and/or CBP.

C. Certification Timing Requirements for Importers and Exporters of Aluminum Extrusions Completed in Vietnam Using Aluminum Not Previously Extruded in China (Including Billets Created from Re-Melted Chinese Extrusions)

- (1) For unliquidated entries of merchandise (a) shipped and/or (b) entered, or withdrawn from warehouse, for consumption during the period, March 5, 2018 (the date of publication of the initiation of these circumvention inquiries), through the 29th day after the date of publication of the final determination in the *Federal Register*, for which certifications are required:

- (a) The importers and exporters each have the option to complete a blanket certification covering multiple entries, individual certifications for each entry, or a combination thereof. Importer and exporter certifications for these entries should be completed, signed and dated within 45 days of publication of the final determination in the *Federal Register*.

Accordingly, the relevant bullet in the certification should be edited to reflect that the certification was completed within this time frame. For example, the bullet in the importer certification that reads: “This certification was completed by the time of filing the entry summary,” could be edited as follows: “The shipments/products referenced herein entered within the 29th day after the mm/dd/yyyy publication of the

Final Determination Federal Register notice. This certification was completed on mm/dd/yyyy, within 45 days of the *Federal Register* notice publication.”

Similarly, the bullet in the exporter certification that reads, “This certification was completed by the time of shipment,” could be edited as follows: “The shipments/products referenced herein shipped within the 29th day after the mm/dd/yyyy publication of the *Final Determination Federal Register* notice. This certification was completed on mm/dd/yyyy, within 45 days of the *Federal Register* notice publication.”

(b) Additionally, the exporter must provide the importer a copy of the exporter certification within 45 days of the publication of the final determination in the *Federal Register*.

(2) For subject merchandise (1) shipped and/or (2) entered, or withdrawn from warehouse, for consumption on or after the date that is 30 days after publication of the final determination in the *Federal Register*, for which certifications are required:

(a) The importer certification must be completed, signed, and dated by the deadline for filing of the entry summary for the relevant importation; and

(b) The exporter certification must be completed, signed, dated and provided to the importer by the time of shipment of the relevant entries.

D. Importers and Exporters Not Eligible for the Certification Process

(1) Importers and exporters of aluminum extrusions from the Socialist Republic of Vietnam (Vietnam):

- that were specifically identified above as not being eligible

- that were completed (including extruded) in Vietnam using aluminum previously extruded in China (including billets created from re-melted Chinese extrusions) and/or

- that do not meet the certification requirements detailed above
- are not eligible for the certification process detailed above.

(2) For aluminum extrusions completed in Vietnam from aluminum previously extruded in China (including billets created from re-melted Chinese extrusions) and, thus, subject to the antidumping duty (AD) and countervailing duty (CVD) orders on aluminum extrusions from the People's Republic of China, A-570-967 and C-570-968, respectively, Commerce has established the following third-country case numbers in the Automated Commercial Environment (ACE): A-552-998 and C-552-999.

(3) For unliquidated entries (and entries for which liquidation has not become final) of merchandise not eligible for the certifications, that entered as non-AD/CVD type entries (*e.g.*, type 01) that were shipped and/or entered, or withdrawn from warehouse, for consumption during the period, March 5, 2018 (the date of publication of the initiation of these circumvention inquiries) through the 29th day after the date of publication of the final determination in the *Federal Register*, importers should file a Post Summary Correction with CBP, as applicable, in accordance with CBP's regulations, regarding conversion of such entries from non-AD/CVD type entries to AD/CVD type (*e.g.*, types 03, 06,) entries and report those AD/CVD type entries using the third-country case numbers, A-552-998 and C-552-999. Similarly, the importer should pay cash deposits on those entries, consistent with the regulations governing post summary corrections, that require payment of additional duties.

(4) Further, Commerce intends to instruct CBP to suspend (under the third-country case numbers identified above) all unliquidated shipments of aluminum extrusions completed in Vietnam for which the certification and/or documentation requirements have not been met, and to require the importer to post applicable AD and CVD cash deposits equal to the rates as determined by Commerce. Entries suspended under these third-country case numbers will be liquidated pursuant to applicable administrative reviews of the China AD and CVD orders or through the automatic liquidation process.

Appendix III

Importer Certification

I hereby certify that:

- My name is {INSERT COMPANY OFFICIAL'S NAME} and I am an official of {INSERT NAME OF IMPORTING COMPANY};
- I have direct personal knowledge of the facts regarding the importation into the Customs territory of the United States of the aluminum extrusions completed in Vietnam that entered under entry number(s) {INSERT ENTRY NUMBER(S)} and are covered by this certification. "Direct personal knowledge" refers to facts the certifying party is expected to have in its own records. For example, the importer should have "direct personal knowledge" of the importation of the product (*e.g.*, the name of the exporter) in its records;
- I have personal knowledge of the facts regarding the production of the imported products covered by this certification. "Personal knowledge" includes facts obtained from another party, (*e.g.*, correspondence received by the importer (or exporter) from the producer regarding the source of the substrate used to produce the imported products);
- The aluminum extrusions completed (including extruded) in Vietnam do not contain aluminum previously extruded in China (including billets created from re-melted Chinese extrusions), regardless of whether sourced directly from a Chinese producer or from a downstream supplier;
- I understand that {INSERT NAME OF IMPORTING COMPANY} is required to maintain a copy of this certification and sufficient documentation supporting this certification (*i.e.*, documents maintained in the normal course of business, or documents

obtained by the certifying party, for example, mill certificates, productions records, invoices, *etc.*) for the later of (1) a period of five years from the date of entry or (2) a period of three years after the conclusion of any litigation in the United States courts regarding such entries;

- I understand that {INSERT NAME OF IMPORTING COMPANY} is required to provide this certification and supporting records, upon request, to U.S. Customs and Border Protection (CBP) and/or the Department of Commerce (Commerce);
- I understand that {INSERT NAME OF IMPORTING COMPANY} is required to maintain a copy of the exporter's certification, (attesting to the production and/or export of the imported merchandise identified above), for the later of (1) a period of five years from the date of entry or (2) a period of three years after the conclusion of any litigation in United States courts regarding such entries;
- I understand that {INSERT NAME OF IMPORTING COMPANY} is required to maintain and provide a copy of the exporter's certification and supporting records, upon request, to CBP and/or Commerce;
- I understand that the claims made herein, and the substantiating documentation, are subject to verification by CBP and/or Commerce;
- I understand that failure to maintain the required certification and/or failure to substantiate the claims made herein will result in:
 - suspension of liquidation of all unliquidated entries (and entries for which liquidation has not become final) for which these requirements were not met; and

○ the requirement that the importer post applicable antidumping duty (AD) and countervailing duty (CVD) cash deposits (as appropriate) equal to the rates determined by Commerce;

- I understand that agents of the importer, such as brokers, are not permitted to make this certification;
- This certification was completed by the time of filing the entry summary; and
- I am aware that U.S. law (including, but not limited to, 18 U.S.C. 1001) imposes criminal sanctions on individuals who knowingly and willfully make materially false statements to the U.S. government.

Signature

NAME OF COMPANY OFFICIAL

TITLE

DATE

Appendix IV

Exporter Certification

I hereby certify that:

- My name is {INSERT COMPANY OFFICIAL'S NAME HERE} and I am an official of {INSERT NAME OF EXPORTING COMPANY};
- I have direct personal knowledge of the facts regarding the production and exportation of the aluminum extrusions identified below. "Direct personal knowledge" refers to facts the certifying party is expected to have in its own books and records. For example, an exporter should have "direct personal knowledge" of the producer's identity and location;
- Thee aluminum extrusions completed (including extruded) in Vietnam do not contain aluminum previously extruded in China (including billets created from re-melted Chinese extrusions), regardless of whether sourced directly from a Chinese producer or from a downstream supplier;
- I understand that {INSERT NAME OF EXPORTING COMPANY} is required to maintain a copy of this certification and sufficient documentation supporting this certification (*i.e.*, documents maintained in the normal course of business, or documents obtained by the certifying party, for example, mill certificates, productions records, invoices, *etc.*) for the later of (1) a period of five years from the date of entry or (2) a period of three years after the conclusion of any litigation in the United States courts regarding such entries;
- I understand that {INSERT NAME OF EXPORTING COMPANY} must provide this Exporter Certification to the U.S. importer by the time of shipment.

- I understand that {INSERT NAME OF EXPORTING COMPANY} is required to provide a copy of this certification and supporting records, upon request, to U.S. Customs and Border Protection (CBP) and/or the Department of Commerce (Commerce);
- I understand that the claims made herein, and the substantiating documentation, are subject to verification by CBP and/or Commerce;
- I understand that failure to maintain the required certification and/or failure to substantiate the claims made herein will result in:
 - suspension of all unliquidated entries (and entries for which liquidation has not become final) for which these requirements were not met; and
 - the requirement that the importer post applicable antidumping duty (AD) and countervailing duty (CVD) cash deposits (as appropriate) equal to the rates as determined by Commerce;
- This certification was completed by the time of shipment; and
- I am aware that U.S. law (including, but not limited to, 18 U.S.C. 1001) imposes criminal sanctions on individuals who knowingly and willfully make materially false statements to the U.S. government.

Signature

NAME OF COMPANY OFFICIAL

TITLE

DATE

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